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Attorneys for Defendants
C. R. Bard, Inc. and
Bard Peripheral Vascular, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

IN RE: Bard IVC Filters Products Liability
Litigation

No. 2:15-MD-02641-DGC

**DEFENDANTS' MOTION FOR
LEAVE TO FILE UNDER SEAL
CERTAIN EXHIBITS IN
SUPPORT OF BARD'S MOTION
TO EXCLUDE THE OPINIONS
OF ROBERT M. MCMEEKING,
PH.D, AND MEMORANDUM OF
LAW IN SUPPORT**

Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively
“Bard”) hereby respectfully move this Court, pursuant to the Stipulated Protective Order
(Doc. 269), Federal Rule of Civil Procedure 26(c)(1)(G), and Local Civil Rule 5.6 for
leave to file under seal certain exhibits attached in support of Bard’s Motion to Exclude
the Opinions of Robert M. McMeeking, Ph.D., and Memorandum of Law in Support.
These exhibits, contain certain trade secrets and confidential information that are

protected under the Stipulated Protective Order, warranting protection from public disclosure. In addition, these exhibits, as well as the portions of Bard's Memorandum of Law that quote, reference, or characterize them, contain certain Plaintiffs' personal healthcare information that is protected under HIPAA and confidential under the Stipulated Protective Order, warranting protection from public disclosure. Accordingly, there is good cause to grant Defendants' Motion for Leave to File Under Seal Certain Exhibits in Support of Bard's Motion to Exclude the Opinions of Robert M. McMeeking, Ph.D., and Memorandum of Law in Support. Defendants have notified Plaintiffs of their intent to file this Motion. Plaintiffs have agreed to the filing of such motions in the past; however, to date, Plaintiffs' have not yet responded to Defendants' attempts to meet and confer on whether Plaintiffs oppose the Motion once Plaintiffs have had an opportunity to review the documents in issue. A list of the Exhibits sought to be sealed are attached hereto as Exhibit A.

ARGUMENT AND CITATION OF AUTHORITY

Bard's Motion to Exclude the Opinions of Robert M. McMeeking, Ph.D., and some of the accompanying Exhibits contain certain Plaintiffs' personal health care information. Portions of the Submission itself, as well as Exhibit B (Excerpts from Dr. McMeeking's 7/6/17 MDL Deposition Transcript), Exhibit C (Excerpts from Dr. McMeeking's 5/24/11 *Newton/Kolenda* Deposition Transcript), and Exhibit F (Excerpts from Dr. Smith's 4/4/17 MDL Deposition Transcript) discuss particular plaintiffs' respective medical histories and current medical conditions, are confidential under the terms of the Stipulated Protective Order (Doc. 269), and are also protected from public disclosure pursuant to HIPAA. Indeed, the Court has already sealed similar information in this litigation.

Similarly, portions of the Submission itself, as well as Exhibit A (Portions of Dr. McMeeking's 3/3/17 Rule 26 Report), Exhibit B (Excerpts from Dr. McMeeking's 7/6/17 MDL Deposition Transcript), Exhibit C (Excerpts from Dr. McMeeking's 5/24/11 *Newton/Kolenda* Deposition Transcript), Exhibit D (Portions of Dr. Betensky's 1/27/17 Rule 26 Report), and Exhibit E (Portions of Dr. McMeeking's 5/11/17 Rebuttal Rule 26

1 Report) contain pieces of highly competitive, confidential, proprietary information that
2 warrant protection under Federal Rule of Civil Procedure 26(c)(1)(G) because the
3 documents are not made public by Bard and, if obtained by Bard's competitors, could give
4 an unfair economic advantage to those competitors.

5 "When a court grants a protective order for information produced during discovery,
6 it already has determined that 'good cause' exists to protect this information from being
7 disclosed to the public by balancing the needs for discovery against the need for
8 confidentiality." *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,
9 1213 (9th Cir. 2002). *See also, Medicis Pharm. Corp. v. Acella Pharm., LLC*, CV 10-
10 1780-PHX-JAT, 2012 WL 2260928 at *2 (D. Ariz. June 15, 2012) (sealing exhibits
11 related to "Medicis' marketing strategy, Acella's product formulation,...various e-mails
12 and deposition transcripts, viscosity test data, sales and marketing information, and
13 various other documents" because "[m]uch of this information has been previously sealed
14 by the Court, has been designated as confidential by the parties pursuant to the protective
15 order in this case, or could otherwise potentially harm the parties if released publicly
16 because of its confidential and sensitive nature.").

17 See also, *Blanchard & Co., Inc. v. Barrick Gold Corp.*, No. 02-3721, 2004 WL
18 737485, at *5 (E.D. La. Apr. 5, 2004) (citing *Pansy v. Borough of Stroudsburg*, 23 F.3d
19 772, 786 (3d Cir. 1994)). Indeed, Bard has already produced Exhibit E and designated it
20 as "CONFIDENTIAL" pursuant to Stipulated Protective Order (Doc. 269), ¶ 6.

21 CONCLUSION

22 For all of the foregoing reasons Bard requests that the Court grant its Motion for
23 Leave to File Under Seal.

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1 RESPECTFULLY SUBMITTED this 24th day of August, 2017.

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28

CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2017, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to all attorneys of record.

s/ Matthew B. Lerner

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EXHIBIT A

DOCUMENTS PROPOSED TO BE FILED UNDER SEAL

Defendants request they be permitted to file under seal the following documents in support of their Motion to Exclude the Opinions of Robert M. McMeeking, Ph.D., and Memorandum of Law in Support.

Exhibit A: Dr. McMeeking's 3/3/17 Rule 26 Report

Exhibit B: Dr. McMeeking's 7/6/17 MDL Deposition Transcript

Exhibit C: Dr. McMeeking's 5/24/11 *Newton/Kolenda* Deposition Transcript

Exhibit D: Dr. Betensky's 1/27/17 Rule 26 Report

Exhibit E: Dr. McMeeking's 5/11/17 Rebuttal Rule 26 Report

Exhibit F: Dr. Smith's 4/4/17 MDL Deposition Transcript